

Pavneet Singh Uppal, SBN 016805
Shayna H. Balch, SBN 024852
FISHER & PHILLIPS LLP
3200 N. Central Avenue, Suite 805
Phoenix, Arizona 85012-2407
Telephone: (602) 281-3400
Fax: (602) 281-3401
puppal@fisherphillips.com
sbalch@fisherphillips.com

Attorneys for Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Cleopatria Martinez,

Plaintiff,

v.

Maricopa County Community College
District; et al.,

Defendants.

No. CV 15-01759-PHX-NVW

**AFFIDAVIT OF SHAYNA H.
BALCH IN SUPPORT OF
DEFENDANT'S MOTION FOR
ATTORNEYS' FEES**

I, Shayna H. Balch, hereby declare as follows:

1. I am over the age of 18 and am competent to testify as to all the matters set forth herein and would so testify if called upon to do so.

2. I have personal knowledge of the matters set forth herein. My personal knowledge is based upon my observations and personal participation in the events described below. In certain instances, my personal knowledge is based on my review of the business records of Fisher & Phillips LLP ("Fisher & Phillips") which are kept in the ordinary course of business.

3. I am a partner with the law firm of Fisher & Phillips. I am a member in good standing with the State Bar of Arizona and an attorney for Defendants in the action

entitled *Cleopatria Martinez v. Maricopa County Community College District, et al.*, Case No. CV 15-01759-PHX-NVW.

4. **Fee Agreement With Fisher & Phillips.** Defendants retained the law firm of Fisher & Phillips to serve as counsel pursuant to a pre-approved request for proposal. Pursuant to the pre-approved request for proposal, defense counsel were authorized to charge, and did in fact charge, the below hourly rates between September 2015 and November of 2017 (the time period relevant to the instant attorneys' fees motion):

- Attorney Pavneet Singh Uppal: \$345.00 per hour
- Attorney Shayna H. Balch: \$325.00 per hour
- Paralegal Denise Karpa: \$100 per hour

A copy of the Notification of Award of a Contract for Legal Services under RFP 3306-4 and accompanying fee sheet is attached hereto as **Exhibit 1**.

5. **Task-Based Itemized Statements of Fees And Non-Taxable Costs.** Defendants' Task-Based Itemized Statements of Fees and Expenses that Defendants have paid in connection with the instant litigation is attached hereto as **Exhibit 2**. The itemization indicates the date on which legal services were provided, the name of the attorney who provided the service, the amount of fees charged for the service, the time expended, and a description of the service provided. **Exhibit 2** was created from the invoices that were sent to and were paid by Defendants from Fisher & Phillips.

6. **Background, Experience, Qualifications and Role of Counsel.** I received my J.D. with Honors from Arizona State University Sandra Day O'Connor College of Law in 2006. I have been practicing law since 2006, primarily in the area of employment law. I worked at Ogletree Deakins as an Associate from 2006 through January of 2010. In January of 2010, I joined the law firm of Fisher & Phillips as an Associate and became a Partner in 2014. I have been primarily responsible for the defense of this case, along with my colleague, Senior Partner Pavneet Singh Uppal.

Pavneet Singh Uppal is a Senior Partner also in the Phoenix office of Fisher & Phillips. He is also a member in good standing of the State Bar of Arizona. Mr. Uppal has been practicing law since he received his J.D. with Honors from the University of Texas-Austin in 1993. He worked for Bryan Cave from 1995-1997 before rejoining Bryan Cave in 1997 as an Associate in the Labor and Employment Department. He became a Partner at Bryan Cave in 2001. On June 9, 2005, Mr. Uppal became a Shareholder with the law firm of Ogletree Deakins. In January of 2010, Mr. Uppal became the Managing Partner of the Phoenix office of Fisher & Phillips.

Denise Karpa was formerly a paralegal with the Las Vegas office of Fisher and Phillips.

7. **Reasonableness of Rate.** Fisher & Phillips charged Defendants rates that are reasonable and are generally in accordance with rates charged by other lawyers in this community with similar experience and education. Defense counsel is seeking recovery of its attorneys' fees at a rate of \$345/hour for partner Pavneet Singh Uppal, \$325/hour for partner Shayna H. Balch, and \$100/hour for paralegal Denise Karpa. These rates are reasonable and generally in accordance with the rates charges by other lawyers in the community with similar experience and education. By way of example, just two years ago Plaintiff's own prior counsel, Tod Schleier (who drafted and filed the Complaint in this case), filed a fee application in an unrelated employment case seeking recovery of attorneys' fees incurred from 2010 through 2012 at an hourly rate of \$475/hour for himself, \$400/hour for his brother, Bradley Schleier, and \$150 for his paralegal. **Exhibit C.**

8. **Reasonableness of Time Spent.** I have reviewed and approved the time set forth in the Defendants' Task-Based Itemized Statements of Fees and Expenses from Fisher & Phillips at **Exhibit 2** and believe that the time spent in this matter was reasonable and necessary under the circumstances. I have reviewed Defendants' Task-Based Itemized Statements of Fees and Expenses, and exercised billing judgment.

1 9. **Defendants' Voluntary Reduction of the Attorneys' Fees and Non-**
2 **Taxable Costs Being Sought Against Plaintiff.** Despite the significant amount of time
3 that defense counsel was forced to expend in the defense of this case, MCCCCD is not
4 seeking recovery of all of its attorney's fees and non-taxable costs against Plaintiff.
5 Rather, MCCCCD seeks an award of attorney's fees and non-taxable costs in the total
6 amount of \$110,000 (the "Requested Amount"). The Requested Amount is less than one
7 half of the amount of fees MCCCCD incurred and actually paid to its defense lawyers in
8 this action. The Requested Amount represents a voluntary reduction of fees sought and
9 does not represent a credit for the elimination of unnecessary, duplicative or excessive
10 time. Nor does it represent the deletion of certain categories of billing entries.

11 10. In addition to the voluntary reduction discussed above, undersigned
12 counsel and MCCCCD's in house counsel separately reviewed Defense counsel's billing
13 statements which were presented on a monthly basis. Before sending monthly invoices
14 to MCCCCD, Defense counsel Pavneet Singh Uppal reviewed each invoice and exercised
15 billing judgment to eliminate unnecessary, duplicative, and excessive time before such
16 bills were presented to MCCCCD for payment. As a result of these efforts, Fisher &
17 Phillips wrote several thousands of dollars in attorneys' fees.

18 11. I declare under penalty of perjury under the laws of the State of Arizona
19 that the foregoing is true and correct.
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1 DATED this 15th day of November 2017.

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3 Shayna H. Balch

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5 SUBSCRIBED AND SWORN TO this 15th day of November 2017.

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7 Notary Public

8 My Commission Expires:



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12
13 FISHER & PHILLIPS LLP
14 3200 N. Central Avenue, Suite 805
15 Phoenix, Arizona 85012-2407
16 (602) 281-3400
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Exhibit 1

Exhibit Filed Under Seal

Exhibit 2

Exhibit Filed Under Seal

Exhibit 3

SCHLEIER LAW OFFICES, P.C.

3101 N. Central Avenue
Suite 1090
Phoenix, Arizona 85012
Telephone: (602) 277-0157
Facsimile: (602) 230-9250

TOD F. SCHLEIER, ESQ. #004612
Email: tod@schleierlaw.com
BRADLEY H. SCHLEIER, ESQ. #011696
Email: brad@schleierlaw.com

SUSAN MARTIN #014226

JENNIFER KROLL #019859

MARTIN & BONNETT, P.L.L.C.

1850 N. Central Ave. Suite 2010
Phoenix, Arizona 85004
Telephone: (602) 240-6900
smartin@martinbonnett.com
jroll@martinbonnett.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Thomas G. Frazier, a married man,) Case No.: CV 10-01618-PHX-DJH
)
Plaintiff,)

v.)

Honeywell International, Inc., a Delaware) **DECLARATION OF BRADLEY**
corporation; Honeywell Retirement Earnings) **SCHLEIER IN SUPPORT OF**
Plan; Salaried Employees Pension Plan of) **PLAINTIFFS' MOTION FOR**
Allied Corporation; Salaried Employees) **AWARD OF ATTORNEYS' FEES**
Pension Plan of AlliedSignal, Inc.; Salaried) **AND COSTS**
Employees Pension Plan of the Bendix)
Corporation; Pension Plan for Salaried)
Employees of General Aviation Avionics;)
Plan Administrator of the Honeywell)
Retirement Earnings Plan; Plan Administrator)
of the Salaried Employees Pension Plan of)
Allied Corporation; Plan Administrator of the)
Salaried Employees Pension Plan of the)

1 Bendix Corporation, Plan Administrator of)
2 the Pension Plan for Salaried Employees of)
3 General Aviation Avionics,)
4 Defendants.)

5 I, Bradley Schleier, state as follows:

6 1. I am a principal in the firm of Schleier Law Offices, P.C., Class Counsel
7 in this action. I submit this declaration in support of Plaintiffs' Motion for Attorneys'
8 Fees and Costs to be paid from the common benefit fund created by the settlement.

9 2. My background, qualifications and experience and those of the other
10 attorneys in this firm are set forth in detail in the declarations submitted to the Court in
11 support of Plaintiffs' Motion for Class Certification, (Doc. 111), and were approved by
12 the Court in its Order granting Plaintiffs' Motion for Class Certification. (Doc. 165 p.
13 11.)

14 3. I have over 27 years of experience litigating employment related cases,
15 ERISA cases. I received my undergraduate degree from Washington University in St.
16 Louis in 1984 and my J.D. from the Arizona State University in 1987. I was admitted to
17 practice law in the State of Arizona in 1987.

18 4. I began working on cases under employment related cases as soon as I
19 began practicing law and have been litigating said cases since that time. My practice
20 spans all type of employment cases, including discrimination, wrongful termination,
21 harassment, wage claims, and other claims relating to the workplace. I have also
22 represented individual clients in ERISA litigation relating to benefits claims.

23 5. I am also involved in many professional activities. I have lectured on
24 various employment related issues and was a former chair of the Labor and
25 Employment Section of the State Bar of Arizona. I have also been recognized by my

1 peers in such publications as Martindale Hubbell, Best Lawyers, and Super Lawyers for
2 my work in the employment related field.

3 6. Our firm practices almost exclusively in the area of employment-related
4 litigation on behalf of individuals and small businesses. Our firm is considered one of the
5 top firms in the State of Arizona for handling employment claims. My partner, Tod
6 Schleier, also performed some work on this case. Tod Schleier has been with the firm
7 since its inception in 1989. He was admitted to practice law in the State of Arizona in
8 1976. He spends a substantial portion of his time litigating employment related
9 cases, as well as being a mediator in employment related cases. He received his
10 undergraduate degree from Brown University in 1973 and his J.D. from Arizona State
11 University in 1976.

12 7. In addition to time spent by Tod Schleier and me, Mary Portillo spent a
13 significant amount of time assisting in the above captions matter. Mary Portillo is a
14 Certified Paralegal and serves as a litigation support paralegal for Schleier Law Offices.
15 She received her Associates degree in Legal Assisting from Phoenix College in 2003
16 and achieved her NALA certification as a Certified Paralegal in 2004. She also
17 completed the NALA Advanced Paralegal Certification program on Discovery in 2009
18 qualifying her for the Advanced Certified Paralegal "ACP" designation. Mary is a
19 member of the National Association of Legal Assistants and the Arizona Paralegal
20 Association and has worked with Schleier Law Offices for over 25 years.

21 8. I began working on the above matter with Mr. Frazier in 2009. As I
22 began to investigate this matter further, it became apparent that the case could involve
23 class claims. As my ERISA experience had been in handling individual benefit claims,
24 I decided to reach out to attorneys with experience in handling Class Action claims
25 involving ERISA. At that time, I had just completed litigating another potential class
action claim with Martin & Bonnett and was well aware of the national scope of their

1 practice as well as their national reputation and experience. I was also aware of the high
2 quality of work performed by Susan Martin and Jennifer Kroll on ERISA Class Action
3 Claims. I therefore sought their involvement as lead counsel in above caption matter.
4 Their firm began work on the case in July 2010 and they made an appearance as lead
5 counsel in March 2011.

6 8. Schleier Law Offices, P.C. has kept detailed contemporaneous time
7 records. Attached as Exhibit "A" to this Declaration is a true and correct copy of a
8 summary of my firm's time in this matter, which accurately records the time devoted by
9 my firm to this litigation.

10 9. I currently charge an hourly rate of \$400 per hour for my time. Tod
11 Schleier regularly charges a rate \$475 per hour. Our firm currently charges a regular
12 hourly rate of \$150-175 per hour for paralegal time. We have reviewed our firms' task-
13 based time records through the date of the filing of this motion and have exercised billing
14 judgment. As noted by the various affidavits attached to Susan Martin's Declaration,
15 these billing rates are well below the averages for attorneys working on complex, class
16 action, ERISA claims.

17 10. From the inception of the Schleier Law Offices' representation in
18 September 2009, through the filing of this motion, our firm has billed lodestar fees in the
19 amount of \$574,432.50.

20 11. Schleier Law Offices is a small firm. This case posed significant financial
21 risks to us and had a significant impact on our business. Litigating this case meant that
22 we had to carefully consider new cases and we also declined other business so we could
23 allocate sufficient time and resources to this matter.

24 12. Attached as Exhibit "B" to this Declaration is a listing of costs and receipts
25 in the amount of \$22,018.36 incurred by Schleier Law Offices related to the litigation

1 separate and apart from the costs submitted with Susan Martin's Declaration.¹ (Bates
2 SchleierCosts 000001-000091).

3 I declare under penalty of perjury under the laws of the United States of America
4 that the foregoing is true and correct.

5 Executed on June 16, 2015.

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Bradley H. Schleier

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9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on June 16, 2015, I electronically filed the foregoing **NOTICE**
11 **OF SERVICE** with the Clerk's Office using the CM/ECF System which shall send
notification of the electronic filing to the following CM/ ECF registrants:

12 David B. Rosenbaum
13 Dawn L. Dauphine
14 OSBORN MALEDON, P.A.
15 2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2794

16 Howard Shapiro (admitted *pro hac vice*)
17 PROSKAUER ROSE LLP
18 650 Poydras Street, Suite 1800
New Orleans, Louisiana 70130-6146

19 Amy Covert (admitted *pro hac vice*)
20 Myron D. Rumeld (admitted *pro hac vice*)
21 Russell L. Hirschhorn (admitted *pro hac vice*)
22 PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036-8299

23

24 ¹ The listing of costs notes \$80,651.59 that was paid to Martin & Bonnett to be used to
25 pay outstanding costs, as well as \$39 in postage costs. Said payments to Martin &
Bonnett are part of the costs and receipts submitted by their firm as noted in Susan
Martin's Declaration.

1 Attorneys for Defendants

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3 Bradley Schleier

Bradley Schleier

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EXHIBIT A

TIME AND CHARGES FOR SCHLEIER LAW OFFICES

Attorney/Paralegal	Hours	Rate	Total
Bradley Schleier	1017.35	\$400	\$406,940.00
Tod Schleier	40.9	\$475	\$ 19,427.50
Mary Portillo	987.10	\$150	\$148,065.00
TOTAL			\$574,432.50